



Commonwealth
of Massachusetts

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Office of Campaign and Political Finance
One Ashburton Place, Room 411
Boston, MA 02108

Advisory Opinion

May 4, 1998
AO-98-08

Barbara Harris, Treasurer
The Friends of the Cape Cod Land Bank
P.O. Box 861
Barnstable, MA 02630-0861

Re: Friends of the Cape Cod Land Bank remaining in existence to support new ballot question

Dear Ms. Harris:

This letter is in response to your April 10, 1998 request for an advisory opinion.

Question

May the existing committee remain in existence to support a new ballot question which will more than likely be put before the voters in November of 1998?

Answer

No. The question which may be on the ballot in November would not be "identical or substantially identical" to the question which was on the ballot in the January 17, 1998 election .

Facts

You have stated that the existing committee was established on August 25, 1997 "to organize voter support for the Cape Cod Land Bank bill, a binding referendum question to appear on the ballot following passage in the Legislature."

The question was defeated in a January 17, 1998 election. There is presently a new Land Bank bill pending in the Legislature. If voted on favorably by the Legislature, the bill will become the subject of a new ballot question. You have stated that "the difference between this bill and the one that was defeated in January is the funding mechanism. The original bill called for a 1% fee to be paid by the seller at time of transfer of real estate. The new bill, as it is presently constituted, requires a real estate tax of up to 3% of

the amount of a person's tax bill, plus a 2% additional tax on hotels and motels on Cape Cod." You also state that you believe there will be a provision for matching funds from the Commonwealth.

The purpose of the Committee, as reflected in its statement of organization is, as you point out, broad. It does not mention any particular funding mechanism.

Based on this office's advisory opinion AO-97-10, you believe that the current committee should be able to remain active and that it can use the funds remaining in the Committee's account to promote the expected November 1998 ballot question.

Discussion

In AO-97-10 we answered two questions. First, we stated that if the specific question a committee organized to support is defeated, the committee may remain in existence to support an identical or substantially identical question in a future election. Second, we stated that given the specific facts in that opinion, a committee organized for the purpose of supporting the passage of a Proposition 2 ½ override to finance a school construction project could remain in existence to support two specific and identifiable questions: one to obtain funding for the design phase of the project, the other to obtain funding for the construction of the project. In connection with this second question we noted:

The design and construction phases of a construction project are integrally related. See AO-95-11. For that reason, a person contributing to the Committee may reasonably expect that the contributed funds would be used to support both phases of the project. In addition, support of separate ballot questions to design and construct the same construction project would be consistent with and within the scope of the purpose of the committee as described in the Committee's statement of organization.

The facts you provided in your letter are substantially different than those dealt with in AO-97-10 and do not fit within any exception to section 18's general prohibition on continuing ballot question committees. The anticipated November ballot question as described in your letter will not be identical or substantially identical to the question defeated in January. Persons who contributed to support the 1% add on fee to be paid by sellers of real estate very possibly would not also support a different question which requires a real estate tax of up to 3% of the amount of a person's tax bill plus a 2% tax on motels and hotels.

A ballot question committee may not remain in existence to influence future elections simply because the committee adopts a statement of purpose which is very broad. The office has consistently stated that "ongoing" ballot question committees were not generally contemplated by the campaign finance law. See AO-95-11 and AO-93-30. In AO-93-30 the office concluded that a ballot question committee organized to support the operation of the schools could not remain in existence to influence differing ballot questions, even if the later question also related the operation of the schools. In that opinion, we stated:

Ballot question committees must dissolve after the adoption or rejection of the ballot question which the committee was established to promote or oppose. Although there might be **certain very limited circumstances** where a committee is created to

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promote or oppose substantially identical ballot questions in more than one election cycle, where contributors would understand that their contributions may be used to promote or oppose a ballot question in a later election, this is not such a case.
[Emphasis added]

Here, as in AO-93-30, the question the committee was organized to influence is not identical or substantially identical to the anticipated later question. Contributors who made contributions before the January election would not necessarily want their funds to be used to support the possible November 1998 question. Therefore, the committee must pay any liabilities and immediately dissolve, donating any residual funds to the Local Aid Fund, a charitable or religious entity, or the general fund of any city or town in the commonwealth, as specified in the Residual Funds clause of the campaign finance law. See M.G.L. c. 55, § 18 (15th paragraph), a copy of which is enclosed.

This opinion is issued within the context of the Massachusetts campaign finance law and is provided on the basis of representations in your letter. Please contact us if you have further questions.

Sincerely,

A handwritten signature in black ink, reading "Michael J. Sullivan", followed by a horizontal line.

Michael J. Sullivan
Director